

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**THE TRUSTEES OF PURDUE
UNIVERSITY,**

Plaintiff,

vs.

**STMICROELECTRONICS
INTERNATIONAL N.V. and
STMICROELECTRONICS, INC.,**

Defendants.

Civil Action No. 6:21-CV-00727-ADA-DTG

JURY TRIAL DEMAND

**DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS'
MOTION TO PARTIALLY STRIKE THE EXPERT REPORTS OF
DR. JAMES A. COOPER AND DR. SARIT DHAR**

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ST's instant motion seeks to preclude Dr. Cooper and Dr. Dhar from testifying that the five products they examined in detail are representative of other products because they relied only on what Plaintiff and its lawyers told them rather than their own analysis. Dkt. 354 at 1. Specifically, Dr. Cooper and Dr. Dhar provide no explanation or bases for why the five products they analyzed are representative of any other product. Instead, they simply cite to a list provided by Plaintiff and its lawyers. Each of the proffered justifications in Plaintiff's response fails, as set forth below.

To be clear, ST does not argue, as Plaintiff suggests (Dkt. 382 at 1), that a plaintiff and its experts cannot rely on representative products. Of course they can. But that is not the basis of ST's motion. ST's motion is based on the fact that Plaintiff's experts did not provide any scientific analysis, explanation or basis for why the five products are purportedly representative of any other products. As such, Dr. Cooper and Dr. Dhar's conclusory statements are unsupported, improper, unreliable and should be stricken, and both experts should be precluded from testifying on allegedly representative products.

I. The Fact that Plaintiff's Experts Reviewed Every Accused Product, Even if True, Would Not Change the Fact That Neither Expert Explained Why or How the Five Products are Representative of the Other Products.

Whether Dr. Cooper and Dr. Dhar analyzed each of the accused products is immaterial because neither provides an explanation or scientific basis for the proposition the five products they discuss in more detail in their reports are in fact representative of any other products.

Dr. Dhar does state in his report that he "reviewed the detailed claim charts" of Exhibit D and Exhibit E of his report (Dkt. 354 at Ex. 3, ¶50), which are the claim charts attached to Plaintiff's infringement contentions. He does also state that he reviewed the GDS files—which are design files—for each of the products (*id.*, ¶52). But listing documents that an expert reviewed is not enough. The report must provide the opinions, and the technical basis for those

opinions. Dr. Dhar provides no explanation whatsoever of why the five products he analyzes are, in his opinion, representative of any other products. The only reason he provides is that “I understand that these products were selected by Purdue as representative of the Accused Products.” Dkt. 354-4, ¶50.

Dr. Cooper states that “the Accused Products” meet certain claim limitations as Plaintiff’s Response asserts, but nowhere does Dr. Cooper say that he examined any products other than the five he discusses in his report, nor does he provide any explanation or technical basis whatsoever for why the five products are, in his opinion, representative of any other products. The only explanation he provides is that “I understand that Purdue and its lawyers have selected certain representative products I understand that these products were selected by Purdue as representative of the Accused Products.” Dkt. 354-3, ¶18.

And in case there is any confusion, Plaintiff’s statement that ST’s argument “ignores the fact that the experts agreed with Purdue’s selection” (Dkt. 384 at 2) is unsupported and incorrect. The experts did not even say they agree—and Plaintiff cites to no such statement. Moreover, they certainly did not provide the reasons or basis for any such purported agreement as required of any expert rendering an opinion.

Thus, Dr. Dhar’s and Dr. Cooper’s “opinions” (bald statements, really) regarding the representative nature of the five products they analyzed in their reports are completely unsupported, conclusory, lack any reliability, and should never be presented to the jury. *Knight v. Kirby Inland Marine Inc.*, 482 F.3d 347, 354-55 (5th Cir. 2007) (“[T]he expert’s testimony must be reliable at each and every step or else it is inadmissible. ‘The reliability analysis applies to all aspects of an expert’s testimony: the methodology, the facts underlying the expert’s opinion, the link between the facts and the conclusion, et alia.’” (quoting *Heller v. Shaw Indus.*,

Inc., 167 F.3d 146, 155 (3rd Cir. 1999)); *see also Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (“[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.”).

II. Plaintiff’s Assertion That “ST Conceded All the Accused Products are Identical in Their Relevant Features” is Both Incorrect and Irrelevant (Even if True).

The truth of Plaintiff’s fantastical claims (Dkt. 382 at 3-5) about the admissions they think they obtained from ST’s witnesses about the similarity of products is irrelevant because Dr. Dhar and Dr. Cooper do not mention or address them, let alone rely upon them in anyway. In fact, Dr. Dhar and Dr. Cooper provide no explanation or discussion of the similarities between the five products and the other products. And therein lies the problem. Because Dr. Dhar and Dr. Cooper did not explain why the five products are representative of any others, they failed to provide “the link between the facts and the conclusion”—a key condition of admissibility. *Knight*, 482 F.3d at 355 (quoting *Heller*, 167 F.3d at 155). These unsupported and unreliable opinions should never be presented to the jury.

III. This is Not an Issue of Weight vs. Admissibility.

Plaintiff asserts that “whether the exemplars are sufficiently representative is a question of the weight of Purdue’s evidence, not its admissibility.” Dkt. 385 at 5. That is not so because unsupported opinions cannot be presented to a jury as expert testimony. *Knight*, 482 F.3d at 354 (explaining that the weight vs. admissibility argument can succeed only when an expert uses scientific methods reliably).

IV. Conclusion.

For the foregoing reasons, ST requests that the Court strike the “representative” products portions of Dr. Cooper’s and Dr. Dhar’s expert reports, and preclude both Dr. Cooper and Dr. Dhar from opining that certain accused products are “representative” of any other products.

Dated: August 29, 2023

Respectfully submitted,

By: /s/ Michael D. Hatcher

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing document was served on all parties to this action via the Court's CM/ECF system on August 29, 2023.

/s/ Michael D. Hatcher
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